REMARKS

PRELIMINARY REMARKS

The present application sets forth Claims 1-16. Examiner has rejected all claims under 35 U.S.C. § 103(a) reasoning as being unpatentable over Maciel (6,112,248) in view of Kawafuji (5,999,536). Applicant has set forth reasoning of which Applicant believes overcomes all rejections of Examiner.

APPLICANT'S REMARKS

Applicant has not amended any claims. In view of the reasons following, Applicant believes that all claims now stand ready for allowance.

Applicant has amended the Title to more accurately recite Applicant's invention and has amended the two drawings as indicated above.

On review of Examiner's comments, Applicant firstly notes that Examiner's cited §103(a) rejections, though set forth based on the general art unit, are applied to the present invention incorrectly and based upon hindsight.

MACIEL ALONE OR IN COMBINATION WITH KAWAFUJI
FAILS TO RENDER THE PRESENT INVENTION OBVIOUS

The Examiner rejects all claims under 35 U.S.C. § 103(a) as being unpatentable over Maciel in view of Kawafuji. For the reasons following, Applicant respectfully disagrees.

Maciel provides an implementation for attempting to cyclically load balance data traffic among two or more routers by repeatedly selecting a router for each workstation (which is to conduct the data transfer in view of the amount of data to be transferred) and setting the workstation routing tables, the Proxy Address Resolution Protocol (PARP) association between physical and network addresses, and the routes to be used by the Open Shortest Path First (OPSF) protocol, in view of the router selected. Such a disclosure is quite specific to the needs and characteristics associated with that of the RFC 1247 (i.e., OPSF) protocol which provides for traffic distribution via a routing algorithm, permitting dynamic changes to the routing absent a provision for dynamic traffic balancing.

Examiner has attempted to imply that Maciel sets forth elements of the present inventions claim 1, but such an implication is based upon hindsight. For Maciel does not teach, teach or motivate one towards an IP layer or using an IP host, let alone coupling an IP host to an IP network via a layer 2 network. Examiner notes that a general description provided in Maciel at Col. 7, lines 59-62, is to be construed to disclose the characteristics of an IP layers, where upon rather casual inspection, it is clear that Maciel is describing a general routing setup common to the PARP. Clearly, the basis for Examiner's implication lacks foundation.

Similarly, Examiner's assertion that Maciel, at Col. 9, lines 37-60, suggests a layer 2 network interfacing an IP network with a set of routers is also unconvincing and lacks foundation.

Again, Maciel is discussing in fairly terms descriptive of and particular to the PARP and the Maciel process showing that communication among workstations in a second network is unaffected by failed network interfaces. Clearly, the basis for Examiner concluding such an assertion lacks basis.

Further the Multiple Address Resolution Protocol (MARP) of the present invention is not identical to that of the Maciel disclosed PARP. In a preferred embodiment, it is the IP Host of the present invention that is connected to the IP network via a layer 2 network interfacing the IP network by a set of routers, the IP Host further including a MARP between the IP layer in the network layer for selecting one of a set of routers in response to the next hop IP address provided by the IP layer to the MARP layer when a packet of data is to be transmitted from the IP Host to one of the workstations. Maciel does not disclose, teach or motivate one towards an IP Host, an IP Host connected to an IP network, an IP Host including a MARP, nor an IP Host employing a MARP for selecting one of set of router in response to the next hop IP address.

Even Examiner has admitted that a next hop IP address is "inherently included in the IP network" (Office Action, at Page 3, paragraph 6) but fails to realize that the "MARP layer operable for selecting one of said set of router in response to a next hop IP address" as well as the mapping of the next hop IP address into a set of candidates IP addresses by the MARP table are not inherently provided for. Similarly, in the present invention, the next hop IP address is passed to the MARP layer instead of the network layer, contrary to any teaching or motivation expressly or implicitly set forth by Maciel.

Arguendo, even if the teachings of Maciel were adapted for Applicant's invention, Applicant's invention would fail to operate as claimed -- as there would not even be a

MARP-like or any other layer between the IP layer and the network layer; instead, at best, based upon Applicant's reasoned insight, there may possibly be a control add-on (92) installed at a workstation to facilitate the setup of an ARP cache at that workstation; again, this result is demonstrative that not only is Maciel ill-applied, but that even if applied in view of Applicant's invention, such an application would not result in the present invention.

In summary, Applicant posits that under the teachings of Maciel, the present invention would fail to operate as claimed as Maciel fails to teach, suggest, motivate or disclose as above described. Similarly, Maciel, which post-dates the Kawafuji reference by less than a year, fails to motivate or suggest that Maciel could be or should be combined with a reference akin to that of Kawafjui. Applicant asserts that there is good reason for the lack of motivation in Maciel for combining with Kawafuji - - that being that there is no reason to combine a non-IP-layer-oriented teaching with that of an IP/MAC addressing and routing reference such as Kawafjui.

However, on review of Kawafjui, Applicant again asserts that Examiner has attempted to employ the reference in hindsight, based on the present invention, and that even if applied (though Applicant believes such is not applicable tot he present invention) such would not render the present invention operable or obvious.

Kawafjui sets forth an implementation for providing a router to serve as a LAN interface device to conduct high-speed routing while generally assuming a situation that most data to be transferred across the LAN assumed certain data characteristics. In Kawafjui there are two routing sections: a first that performs routing when it is determined that the IP address of the destination of a received packet is not stored in a memory table, and a second that outputs a received packet based on the MAC address corresponding to the IP address that is

stored in the memory table. The Kawafjui arrangement is well-suited to the situation where multiple LANs are directly connected to a router, contrary to the present invention.

As such, though Kawafuji is instructive in its narrow application, the combination of Kawafuji with Maciel is ill-founded. In contrast to the present invention, neither Maciel nor Kawafuji propose or promote such features, characteristics and/or teachings.

Applicants invention is patentably distinct as the present invention for the reasons set forth above and in the Specification. The cited references are each and in combination devoid of any suggestion of the present invention.

Since (1) Maciel fails to disclose or render obvious the claimed features of the present independent claims (and the dependent claims depending variously therefrom) of the present invention; (2) and as Kawafuji, in combination with Maciel, does not correct this infirmity; and, (3) as it is not obvious to one of ordinary skill in the art to purposefully make a combination that frustrates the utility of a device, as clearly this combination would do; it is respectfully submitted that the rejection under 35 USC 103(a) is traversed.

Applicant believes that the Examiner has, in error, cited the present invention as being obvious <u>as a direct result of and in clear view of</u> the present application. The present application discloses features and/or functions of the invention which had not heretofore been considered in the cited prior art, and which would not have been asserted as obvious upon examination *but for* the disclosure itself. Applicant asserts that such hindsight

reasoning is clearly an improper basis for the finding of obviousness[1] as the cited prior references do not teach, disclose or suggest that which is disclosed in the present application. As such, Applicant requests that the Examiner set forth a prima facie case supporting an obvious-type rejection or, preferably and in concert with the reasoning set forth above, remove the rejections as Applicant has traversed each and all of Examiner's rejections.

SPECIFICATION TO PAGE 10 TO CORRECT TYPOS AUTHORIZED

Per Examiner's notation, at Page 10, lines 3 and 17, minors typos do exist and Applicant authorizes Examiner to change to correct; alternatively, Applicant will provide a formal amendment if required by Examiner. Examiner is invited to contact Applicant is such is required.

ALL CLAIMS STAND READY FOR ALLOWANCE

Applicant asserts that Examiner's rejections to all claims are now rendered moot, and that therefore, all claims now stand ready for allowance for each and all of the reasons above.

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[1]

See, e.g., In re Gorman, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Federal Circuit 1991) ("As in all determinations under 35 U.S.C. §103, the decision maker must bring judgment to bear. It is permissible to, however, simply to engage in a hindsight reconstruction of the claimed invention, using applicant's structure as a template and selecting elements from references to fill the gaps."); Symbol Technologies Inc. v. Opticon Inc., 17 USPQ2d 1737, 1746 (S.D.N.Y. 1990) aff'd, 935 F.2d 1569, 19 USPQ2d 1241 (Fed. Cir. 1991) ("That a technician, in hindsight, could combine elements known within the technology to produce the contested patent does not make the patent obvious to one skilled in the art at the time the patent was issued."); In re Dow Chemical Co., 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir 1988) ("The consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success, view in light of the prior art...Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure."); Medtronic, Inc. v. Cardiac Pacemakers, Inc., 721 F.2d 1563, 1582 (Fed. Cir. 1983) ("whether the references, taken as a whole, would suggest the invention to one of ordinary skill in the art);

REQUEST TO PROCEED TO ALLOWANCE

For each and all of the reasoning set forth above, and as Applicant believes each and all of Examiner's objections and rejections have been traversed, Applicant requests that the application be reconsidered and a timely notice of allowance be issued.

ADMINISTRATIVE MATTERS

Applicant requests that Examiner ensure future correspondence be directed to the Attorney undersigned hereto, and that the record be updated to reflect the undersigned as the **Attorney of Record** for all matters henceforth. The Examiner is invited to contact the undersigned for any and all matters related to this Application.

Respectfully submitted,

By: _____
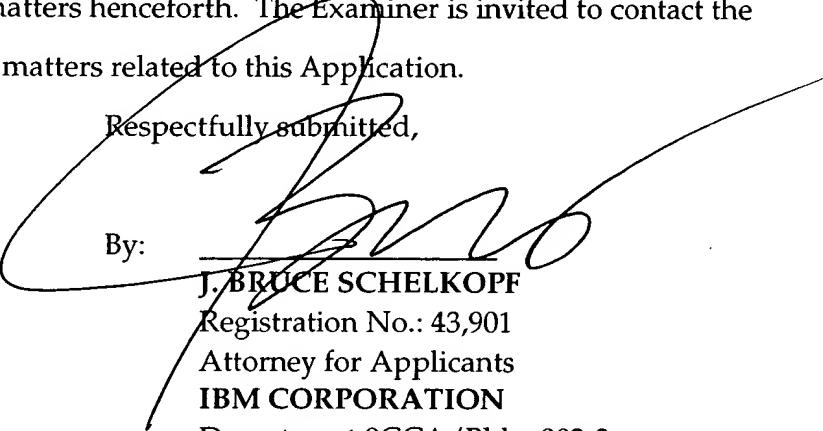
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